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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-267

13  
14 **SCOTT JEFFREY WEINERTH**  
15 **6122 Terri Lynn Drive**  
16 **St. Louis, MO 63123**  
**Registered Nurse License No. 535453**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

17  
18 Respondent.

19 **FINDINGS OF FACT**

20 1. On or about October 11, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs, filed Accusation No. 2013-267 against Scott Jeffrey Weinerth ("Respondent")  
23 before the Board of Registered Nursing. Accusation No. 2013-267 is attached as Exhibit 1 to the  
24 Default Decision Investigatory Evidence Packet and is hereby incorporated by reference.

25 2. On or about August 18, 1997, the Board of Registered Nursing ("Board") issued  
26 Registered Nurse License No. 535453 to Respondent. The Registered Nurse License expired on  
27 August 31, 2001, and has not been renewed. Pursuant to Business and Professions Code ("Code")  
28

1 section 2764, the expiration of Respondent's license does not deprive the Board of jurisdiction to  
2 proceed with this disciplinary proceeding or to render a decision imposing discipline on the  
3 license.

4 3. On or about October 11, 2012, Respondent was served by Certified and First Class  
5 Mail copies of the Accusation No. 2013-267, Statement to Respondent, Notice of Defense,  
6 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
7 and 11507.7) at Respondent's address of record which, pursuant to California Code of  
8 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.  
9 Respondent's address of record with the Board was and is:

10 **6122 Terri Lynn Drive**  
11 **St. Louis, MO 63123.**

12 4. On or about November 7, 2012, the aforementioned documents, served via Certified  
13 Mail, were returned by the U.S. Postal Service marked as, "Return to sender, unclaimed, unable  
14 to forward, return to sender." The aforementioned documents served via First Class Mail were  
15 not returned as undeliverable.

16 5. On or about October 11, 2012, Respondent was served by Certified and First Class  
17 Mail copies of the Accusation No. 2013-267, Statement to Respondent, Notice of Defense,  
18 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
19 and 11507.7) at Respondent's last known address of record, which is:

20 **5231 Del Prado Blvd**  
21 **Cape Coral, FL 33904.**

22 6. On or about October 24, 2012, the Board received the Domestic Return Receipt for  
23 the aforementioned documents served via Certified Mail. The Domestic Return Receipt was  
24 signed in the name of Scott Weinerth and dated October 6, 2012. The aforementioned documents  
25 served via First Class Mail were not returned as undeliverable.

26 7. Service of the Accusation was effective as a matter of law under the provisions of  
27 Government Code section 11505, subdivision (c) and Business & Professions Code section 124.

28 ///

1 8. Government Code section 11506 states, in pertinent part:

2 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
3 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
4 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

5 9. Respondent failed to file a Notice of Defense within 15 days after service upon him  
6 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
7 2013-267.

8 10. California Government Code section 11520 states, in pertinent part:

9 (a) If the respondent either fails to file a notice of defense or to appear at the  
10 hearing, the agency may take action based upon the respondent's express admissions  
11 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

12 11. Pursuant to its authority under Government Code section 11520, the Board finds  
13 Respondent is in default. The Board will take action without further hearing and, based on the  
14 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
15 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
16 file at the Board's offices regarding the allegations contained in Accusation No. 2013-267, finds  
17 that the charges and allegations in Accusation No. 2013-267, are separately and severally, found  
18 to be true and correct by clear and convincing evidence.

19 12. Taking official notice of its own internal records, pursuant to Business and  
20 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
21 and Enforcement is \$852.00 as of November 8, 2012.

22 **DETERMINATION OF ISSUES**

23 1. Based on the foregoing findings of fact, Respondent Scott Jeffrey Weinerth has  
24 subjected his Registered Nurse License No. 535453 to discipline.

25 2. The agency has jurisdiction to adjudicate this case by default.

26 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered  
27 Nurse License based upon the following violations alleged in the Accusation which are supported  
28 by the evidence contained in the Default Decision Evidence Packet in this case.:

1           **a. Disciplinary Action by the Louisiana State Board of Nursing.** Respondent is  
2 subject to disciplinary action under Code section 2761, subdivision (a)(4), on the grounds of  
3 unprofessional conduct in that Respondent's registered nurse license was disciplined by the  
4 Louisiana State Board of Nursing ("Louisiana Board"). On or about October 21, 2008, pursuant  
5 to the Voluntary Surrender of License issued by the Louisiana Board, in the disciplinary action  
6 entitled, *In the Matter of: Scott Jeffrey Weinerth, 6122 Terri Lynn Drive, Saint Louis, MO 63123*,  
7 the Louisiana Board accepted the voluntary surrender of Respondent's registered nurse and  
8 certified registered nurse anesthetist licenses. The basis for the Order is as follows:

9           i. On or about June 14, 2004, Respondent was convicted of carrying a  
10 handgun while intoxicated, a misdemeanor. Respondent failed to disclose this conviction on his  
11 license renewal application.

12           ii. On or about November 17, 2005, Respondent was charged in  
13 criminal court with sexual battery of an incapacitated person, a felony, and tampering with a  
14 witness, a felony. Respondent failed to disclose the criminal charges on his license renewal  
15 application.

16           **b. Disciplinary Action by the State of Florida Board of Nursing.** Respondent is  
17 subject to disciplinary action under Code section 2761, subdivision (a)(4), on the grounds of  
18 unprofessional conduct in that Respondent's registered nurse license was disciplined by the State  
19 of Florida Board of Nursing ("Florida Board"). On or about April 23, 2008, pursuant to the Final  
20 Order issued by the Florida Board, in the disciplinary action entitled, *Department of Health vs.*  
21 *Scott Jeffrey Weinerth*, case number 2007-23115, the Florida Board reprimanded Respondent,  
22 ordered him to pay a fine of \$250.00, and ordered him to enroll in a continuing education course  
23 on legal aspects of nursing and ethics. On or about January 10, 2011, in the disciplinary action  
24 entitled, *In Re: Emergency Suspension of the License of Scott Jeffrey Weinerth, C.R.N.A.*, the  
25 Florida Board issued an Order suspending Respondent's registered nurse license after Respondent  
26 tested positive for alcohol while at work and failed to appear for a scheduled mental health  
27 evaluation.

28           **c. Unprofessional Conduct.** Respondent is subject to disciplinary action under Code

1 section 2761, subdivision (a), in that Respondent committed acts of unprofessional conduct. The  
2 conduct is more particularly described in paragraphs 3, subparagraphs (a)(i-ii) and (b), inclusive,  
3 above, and herein incorporated by reference.

4 ///

ORDER

IT IS SO ORDERED that Registered Nurse License No. 535453, heretofore issued to Respondent Scott Jeffrey Weinerth, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 8, 2013.

It is so ORDERED February 8, 2013



FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

51191140.DOC  
DOJ Matter ID:LA2012507814

# Exhibit A

Accusation Case No. 2013-267

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2 KAREN B. CHAPPELLE  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2013-267

11 **SCOTT JEFFREY WEINERTH**  
12 **6122 Terri Lynn Drive**  
13 **St. Louis, MO 63123**

**A C C U S A T I O N**

14 **Registered Nurse License No. 535453**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her  
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
20 Consumer Affairs.

21 2. On or about August 18, 1997, the Board of Registered Nursing issued Registered  
22 Nurse License Number 535453 to Scott Jeffrey Weinerth ("Respondent"). The Registered Nurse  
23 License expired on August 31, 2001, and has not been renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Registered Nursing ("Board"),  
26 Department of Consumer Affairs, under the authority of the following laws. All section  
27 references are to the Business and Professions Code ("Code") unless otherwise indicated.  
28



4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

## STATUTORY PROVISIONS

5. Section 118, subdivision (b) of the Code provides, in pertinent part:

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

7. Section 2761 of the Code provides, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action ...”

8. Section 2811, subdivision (b) of the Code provides:

“Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of

1 the applicant's qualifications as may be required by the board,  
2 except that during such eight-year period no examination shall be  
3 required as a condition for the reinstatement of any such expired  
4 license which has lapsed solely by reason of nonpayment of the  
5 renewal fee. After the expiration of such eight-year period the board  
6 may require as a condition of reinstatement that the applicant pass  
7 such examination as it deems necessary to determine his present  
8 fitness to resume the practice of professional nursing."

#### 9 REGULATORY PROVISIONS

10 9. California Code of Regulations, title 16, section, 1419.3 provides:

11 "In the event a licensee does not renew his/her license as provided  
12 in Section 2811 of the code, the license expires. A licensee  
13 renewing pursuant to this section shall furnish a full set of  
14 fingerprints as required by and set out in section 1419(b) as a  
15 condition of renewal.

16 (a) A licensee may renew a license that has not been expired for  
17 more than eight years by paying the renewal and penalty fees as  
18 specified in Section 1417 and providing evidence of 30 hours of  
19 continuing education taken within the prior two-year period.

20 (b) A licensee may renew a license that has been expired for more  
21 than eight years by paying the renewal and penalty fees specified in  
22 Section 1417 and providing evidence that he or she holds a current  
23 valid active and clear registered nurse license in another state, a  
24 United States territory, or Canada, or by passing the Board's current  
25 examination for licensure."

#### 26 COST RECOVERY

27 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 administrative law judge to direct a licentiate found to have committed a violation or violations of  
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
enforcement of the case.

#### 29 FIRST CAUSE FOR DISCIPLINE

##### 30 (Disciplinary Action by the Louisiana State Board of Nursing)

31 11. Respondent is subject to disciplinary action under Code section 2761, subdivision  
32 (a)(4), on the grounds of unprofessional conduct in that Respondent's registered nurse license was  
33 disciplined by the Louisiana State Board of Nursing ("Louisiana Board").

34 12. On or about October 21, 2008, pursuant to the Voluntary Surrender of License

1 issued by the Louisiana Board, in the disciplinary action entitled, *In the Matter of: Scott Jeffrey*  
2 *Weinerth, 6122 Terri Lynn Drive, Saint Louis, MO 63123*, the Louisiana Board accepted the  
3 voluntary surrender of Respondent's registered nurse and certified registered nurse anesthetist  
4 licenses. The basis for the Order is as follows:

5 a. On or about June 14, 2004, Respondent was convicted of carrying a  
6 handgun while intoxicated, a misdemeanor. Respondent failed to disclose this conviction on his  
7 license renewal application.

8 b. On or about November 17, 2005, Respondent was charged in criminal  
9 court with sexual battery of an incapacitated person, a felony, and tampering with a witness, a  
10 felony. Respondent failed to disclose the criminal charges on his license renewal application.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Disciplinary Action by the State of Florida Board of Nursing)**

13 13. Respondent is subject to disciplinary action under Code section 2761, subdivision  
14 (a)(4), on the grounds of unprofessional conduct in that Respondent's registered nurse license was  
15 disciplined by the State of Florida Board of Nursing ("Florida Board").

16 14. On or about April 23, 2008, pursuant to the Final Order issued by the Florida  
17 Board, in the disciplinary action entitled, *Department of Health vs. Scott Jeffrey Weinerth*, case  
18 number 2007-23115, the Florida Board reprimanded Respondent, ordered him to pay a fine of  
19 \$250.00, and ordered him to enroll in a continuing education course on legal aspects of nursing  
20 and ethics.

21 15. On or about January 10, 2011, in the disciplinary action entitled, *In Re: Emergency*  
22 *Suspension of the License of Scott Jeffrey Weinerth, C.R.N.A.*, the Florida Board issued an Order  
23 suspending Respondent's registered nurse license after Respondent tested positive for alcohol  
24 while at work and failed to appear for a scheduled mental health evaluation.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct)**

27 16. Respondent is subject to disciplinary action under Code section 2761, subdivision  
28 (a), in that Respondent committed acts of unprofessional conduct. The conduct is more

1 particularly described in paragraphs 12, subparagraphs (a) and (b), 13, 14, and 15 inclusive,  
2 above, and herein incorporated by reference.

3 **PRAYER**

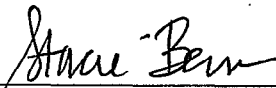
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 535453, issued to Scott  
7 Jeffrey Weinerth;

8 2. Ordering Scott Jeffrey Weinerth to pay the Board of Registered Nursing the  
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
10 Professions Code section 125.3; and

11 3. Taking such other and further action as deemed necessary and proper.  
12  
13

14 DATED: OCTOBER 11, 2012

15 *for* 

16 LOUISE R. BAILEY, M.ED., RN  
17 Executive Officer  
18 Board of Registered Nursing  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant

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